

Honouring the Malaysia Agreement

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AS we commemorate 57 years of the formation of Malaysia, we need to recapture the spirit of accommodation, moderation and compassion that animated the leaders of the Malaysia Agreement in 1963.

The Federal Government and leaders of Sabah and Sarawak must re-dedicate themselves to the pacts of the past.

A peek into many landmark events that sowed the seeds of the concept of the Federation of Malaysia may give a better perspective of the prevailing discontent in Sabah and Sarawak.

During 1962 and 1963, resolutions were passed by the Malaysia Solidarity Consultative Committee and the Legislative Council of North Borneo (Sabah) to proceed with the Malaysia proposal but on the condition that the special rights of the Borneo States be protected.

The 20-Points Manifesto of the Sabah Alliance and a similar 18-Point Agreement in Sarawak were drafted.

The joint British-Malayan (Cobbold) Commission of Enquiry reported that the new federation would be in the best interests of North Borneo and Sarawak.

As a result, the Inter-Governmental (Lord Lansdowne) Committee (IGC) was tasked to work out the future constitutional arrangements including safeguards for the special

interests of North Borneo and Sarawak to cover such matters as religious freedom, education, representation in the Federal Parliament, the special position of the indigenous races, control of immigration, citizenship and state constitutions. Leaders of North Borneo and Sarawak were represented in the IGC.

Elections were held in North Borneo in 1962 and in Sarawak in 1963 where one of the issues was the formation of Malaysia.

This self-determination process was, however, rejected by the governments of the Philippines and Indonesia.

A tripartite summit was therefore held in Manila in 1963. The UN Secretary-General appointed a Mission to the Borneo States to conduct a survey on whether the Malaysia proposal had the backing of the people of the Borneo States.

The Mission's view, though contested by many today, was that there was such support.

The Malaysia Agreement was signed on July 9, 1963.

Subsequently, a monumental amendment to the Federal Constitution in the form of the Malaysia Act (No 26 of 1963) was passed in the Federal Parliament with effect from Sept 16, 1963.

The amendment gave effect to most, but not all, of the demands as

well as negotiated settlements.

The Malaysia Act rewrote the Merdeka Constitution to accommodate the realities of a new, enlarged and immensely more diverse nation.

Eighty-seven out of 181 Articles and 10 out of 13 Schedules of the Federal Constitution were amended.

Thirty-five new articles were inserted to grant to Sabah and Sarawak guarantees of their autonomy and special position.

This special position was justified for many reasons. The 1963 pact between the Federation of Malaya, the UK government, North Borneo (Sabah), Sarawak and Singapore was drawn up after a lengthy process of bargaining and negotiations.

The delegates from Sabah and Sarawak made it very clear to the IGC that special treatment was a pre-condition for constituting Malaysia.

Though the IGC Report and the Malaysia Agreement were not fully incorporated into the Malaysia Act and the Federal Constitution, their sanctity and quasi-constitutional status have been reiterated by our courts in several decided cases.

Among them are Sugumar Balakrishnan (2002), Datuk Hj Muhammad Tufail (2009), Robert Linggi (2011), Fung Fon Chen@ Bernard (2012), and the scintillating

dissenting judgment of the then Chief Judge of Sabah and Sarawak, Tan Sri David Wong Dak Wah, in TR Sandah Ak Tabau (2019).

In many countries like the UK, Canada and Australia, pre-constitutional and foundational documents are often employed to interpret the Constitution and other domestic laws. We, too, should show tenderness for these pacts of the past.

Special safeguards for Sabah and Sarawak are also justified due to their cultural and religious distinctiveness, and severe problems of persistent poverty and under-development.

One must also note that Sabah and Sarawak contribute huge territories and massive resources to the federation.

Their combined area is 198,069 sq km, exceeding Peninsular Malaysia's 131,681 sq km. Their coastline is 2,607 km compared to the Peninsula's 2,068 km.

It is also noteworthy that special autonomy for some states or regions are common in many nations of the world in order to preserve unity in diversity.

Kashmir in India (till August 2019), Quebec and Nunavut in Canada, Northern Ireland in the UK, The Corsicans in France, Mindanao in the Philippines and Aceh in Indonesia enjoy such asymmetrical arrangements.

Sadly, however, 57 years down the road, not all is well with the (former) Borneo states' relationship with the Federal Government.

In many areas, Sabah and Sarawak's autonomy has suffered serious retreat due to constitutional, political, cultural and religious developments in the peninsula.

Much can be done and is being attempted to douse the embers of controversy.

Leaders of the Federal Government now recognise that Sabah and Sarawak's restiveness is real and must be addressed.

The issues are not merely about equity and efficiency in intergovernmental financial relations but also extend to perceived interference with Sabah and Sarawak's cultural, ethnic and religious uniqueness.

One hopes that as we commemorate Malaysia Day, the 1963 spirit of accommodation will be revived, the pacts of the past will be honoured, grievances noted, and solutions crafted so that our federation will go on to become stronger and more united.

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